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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

J.M.,

Petitioner,

v.

THE SUPERIOR COURT OF FRESNO
COUNTY,

Respondent;

FRESNO COUNTY DEPARTMENT OF
SOCIAL SERVICES,

Real Party in Interest.

F065653

(Super. Ct. No. 96951-2)

OPINION

THE COURT*

ORIGINAL PROCEEDINGS; petition for extraordinary writ review. Mary Dolas,
Commissioner.

Heather Ann Von Hagen, for Petitioner.

No appearance for Respondent.

Kevin B. Briggs, County Counsel, and William G. Smith, Deputy County
Counsel, for Real Party in Interest.

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* Before Levy, Acting P.J., Cornell, J. and Franson, J.

J.M. (mother) seeks an extraordinary writ (Cal. Rules of Court, rule 8.452) from the juvenile court's orders issued at a contested dispositional hearing in August 2012, denying her reunification services under Welfare and Institutions Code, section 361.5, subdivisions (b)(10) and (11),¹ and setting a section 366.26 hearing as to her three-year-old son, Jordan. We deny the petition.

PROCEDURAL AND FACTUAL SUMMARY

In March 2012, social worker Kevin Moua from the Fresno County Department of Social Services (department) accompanied a police officer to mother's home after receiving a report that mother and her live-in boyfriend, Russell W., were using dirty needles, which they left within reach of mother's three and one-year-old sons, Jordan and Logan, respectively. Russell is Logan's father.

Russell told the officer that he used methamphetamine intravenously in the morning and late at night after the children went to bed and that mother smoked methamphetamine every other day in the bathroom while the children were in the living room watching television. He also said he and mother smoked marijuana together. Mother stated that she believed Frank S. was Jordan's father but was not sure. She also stated that she had a restraining order against Frank.

The officer found drugs and needles in the home and Moua noted the home was in disarray and that the bathroom smelled rancid and was filled with dirty diapers. Mother and Russell were arrested and Jordan and Logan were taken into protective custody.

The department filed a dependency petition alleging that mother and Russell's drug use placed Jordan and Logan at a substantial risk of harm. (§ 300, subd. (b).) The department further alleged that mother neglected Jordan and Logan's half-sister, K.M.,

¹ All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

and that after receiving reunification services she failed to reunify with K.M. and her parental rights were terminated.

The juvenile court ordered Jordan and Logan detained and ordered the department to offer Russell services. The juvenile court did not offer mother services but ordered reasonable supervised visits for her. In May 2012, the juvenile court sustained the allegations and set a dispositional hearing for June 2012.

In its report for the dispositional hearing, the department recommended that the juvenile court deny mother reunification services under section 361.5, subdivisions (b)(10) and (11), because her reunification services and parental rights as to K.M. were terminated in 2010 and she subsequently failed to make reasonable efforts to remedy the problems that necessitated K.M.'s removal.

As supportive evidence, the department provided further detail about the circumstances of K.M.'s dependency. K.M. was actually removed from mother's custody twice, once in 2000, and again in 2009. In 2000, mother and K.M. were living with William M., mother's husband and K.M.'s father. William had a history of methamphetamine use and violent outbursts and, according to the record, both he and mother are developmentally delayed. In November 1999, the department began receiving reports that mother had limited understanding of how to care for newborn K.M., placing K.M. at risk of harm. These were followed in 2000 by reports that William was physically abusing K.M. and engaging in domestic violence with mother. In April 2000, the department substantiated a referral for general neglect and placed the parents under a plan of voluntary maintenance services.

Over the next four months, the department continued to receive reports that William physically abused K.M. and that the parents abused drugs and alcohol, but the department was unable to substantiate these claims. However, in August 2000, the department received a report that William gave then 11-month-old K.M. alcohol and pulled hard on her legs and that there was drug use and domestic violence in the home.

The department removed K.M. from the home. Mother received services and reunified with K.M. in April 2002.

Over the ensuing years, the department continued to receive reports that K.M. was at risk in mother's care. Most notable are the following. In October 2004, it was reported that K.M. was not being cared for and losing too much weight. In December 2005, it was reported that the family home was found to be filthy and had to be continually sprayed for roaches because of the filth and food left out on the counters. In April 2006, it was reported that mother's live-in boyfriend viewed pornography on the computer while K.M. was in the room. It was reported that mother was aware of this and did nothing. It was also reported that there were weapons in the home and concern that K.M. had access to them. In 2006, the department began to receive reports that William verbally abused mother and K.M. and that mother's boyfriend, Frank S., physically abused K.M. In 2007, the department began receiving reports that William was sexually molesting K.M., including allegations of digital penetration. In March 2007, it was reported that K.M. was taken to the hospital for dehydration and malnutrition. In October 2008, the department received a report that K.M. went to school dirty and wearing clothes that were too small. She could not recall when she last had a bath and said she had not eaten breakfast or dinner the day before. Frank S. reportedly stated that K.M. should take care of herself. None of these reports were substantiated. However, in January 2009, the department investigated a report and found the home cluttered and without gas or electricity. The department took then nine-year-old K.M. into protective custody for a second time. In February 2009, mother gave birth to Frank's son, Jordan.

In March 2009, the juvenile court sustained an allegation under section 300, subdivision (b) (failure to protect) that K.M. was at a substantial risk of suffering serious physical harm or illness because mother was developmentally delayed, which negatively impacted her ability to provide adequate care, protection, supervision, and a clean home. It was further alleged that the home was dirty and cluttered and smelled of animal urine

and that there was no electricity even though mother received Social Security Supplemental Income to pay her bills. In addition, mother allowed Frank to control her life and to exploit her by taking her money, writing bad checks, denying her and K.M. food when he was angry at them and verbally abusing them. It was also alleged that K.M. was made to stay in her room for long periods of time without food and had to ask permission for water as a means of punishment and that she weighed 46 pounds, had poor hygiene, was often infested with lice, and was doing poorly in school.

In April 2009, the juvenile court ordered reunification services for mother and William. Mother was ordered to participate in parenting classes, mental health treatment and domestic violence counseling. Neither parent reunified with K.M. In May 2010, the juvenile court terminated mother's reunification services because she did not demonstrate the ability to comply with all of her services and in September 2010, the juvenile court terminated her parental rights as to K.M. In March 2011, mother gave birth to Logan, fathered by Russell W.

The only other documented referral before these proceedings occurred in September 2011. According to the referral, mother did not adequately feed Jordan and Logan, and Russell was seen slapping Jordan. The department was unable to contact the family and the referral was deemed inconclusive.

In addition to recommending that the juvenile court deny mother reunification services at the dispositional hearing for Jordan and Logan, the department also reported that mother's visitation with the children went well and that mother enrolled in outpatient substance abuse treatment and was reportedly doing well.

Mother challenged the department's recommendation to deny her services and the juvenile court conducted a contested dispositional hearing in August 2012. Mother testified that K.M. was removed from her custody in 2009 because her house was dirty and there was no electricity. She denied using drugs at that time. She said that Frank was living with her and K.M. and that he mistreated her by taking advantage of her for

money and telling her she was “slow and disabled.” She said she had a restraining order against him. She also said that she completed the parenting class and domestic violence counseling ordered in 2009 and learned about nutrition and how to love and discipline her children and not to return to the partner who hurt or took advantage of her. She also said that she completed the drug program and was in aftercare. She tested negative for drugs and was participating in a Celebrate Recovery program. She was also on a waiting list for a parenting class. Asked what she would have done differently, she said she would have left Russell after she asked him to quit using drugs and he did not.

On cross-examination, mother testified that she started using drugs so she could party with Russell and knew that drugs could cause her to lose her children. She further testified that she took two parenting classes during K.M.’s dependency and was taught about keeping her house clean and not exposing her children to drug-users. She acknowledged that her house was very dirty and that there were needles in her home when the police removed Jordan and Logan from her. She also admitted that her family warned her about William, Frank and Russell, but she did not listen. She thought Russell was “a really good father” even though he used drugs and left needles within the children’s reach.

The juvenile court heard testimony from other witnesses, as well as argument, and made its rulings. It ordered Jordan and Logan removed from mother’s custody and denied her reunification services under section 361.5, subdivisions (b)(10) and (11). The court also denied Frank reunification services and ordered a section 366.26 hearing as to him. As to Logan, the juvenile court ordered reunification services for Russell and set a six-month review hearing. Mother challenged the juvenile court’s orders denying her reunification services as to Jordan by this writ petition, and as to Logan by direct appeal, which is pending before this court (F065651).

DISCUSSION

When a child is removed from parental custody, the juvenile court is required to order reunification services for the child and the child's parents unless the court finds by clear and convincing evidence that the parent is described by any of the 15 exceptions set forth in section 361.5, subdivision (b) (subdivision (b)). (§ 361.5, subds. (a) & (b)(1)-(15).) These exceptions to the general rule reflect a legislative determination that attempts to reunify may be futile under certain circumstances and may not serve a child's interests. (*Karen S. v. Superior Court* (1999) 69 Cal.App.4th 1006, 1010.)

The relevant exceptions in this case, subdivisions (b)(10) and (11) provide in relevant part:

“(b) Reunification services need not be provided to a parent ... when the court finds, by clear and convincing evidence [¶] ... [¶] (10) [t]hat the court ordered termination of reunification services for any siblings ... of the child because the parent ... failed to reunify with the sibling ... and [the] parent ... has not subsequently made a reasonable effort to treat the problems that led to removal of the sibling ... of that child from that parent [¶] (11) [t]hat the parental rights of a parent over any sibling ... of the child had been permanently severed, ... and [the] parent has not subsequently made a reasonable effort to treat the problems that led to removal of the sibling ... of that child from the parent.”

Mother does not dispute that subdivisions (b)(10) and (11) apply insofar as her reunification services and parental rights as to K. M. were terminated. Rather, she contends that K.M. and Jordan were removed from her custody for different reasons and therefore substantial evidence does not support the juvenile court's finding that she failed to make subsequent efforts to treat the problems that necessitated K.M.'s removal. Mother's argument, however, is fundamentally flawed.

First, she misapplies the statute by establishing the circumstances of K.M.'s first removal, i.e. William's substance abuse and violent behavior, as a basis for assessing her subsequent efforts. She contends that she remedied that situation by completing services and reunifying with K.M. She then argues that K.M.'s second removal and Jordan's

removal were not necessitated by her failure to protect them from substance abuse and violent behavior.

The “subsequent” efforts that a parent must demonstrate under section 361.5, subdivisions (b)(10) and (11) refer to efforts made after the parent’s reunification services are terminated or after their parental rights are severed. In this case, mother’s services and parental rights as to K.M. were terminated in 2010, after her second dependency. The cause for removal in that case was mother’s abandonment of her parental responsibility for K.M. in favor of Frank’s dominance over the household finances and discipline. The result was that Frank controlled mother’s finances and verbally abused her and K.M., the home was filthy and without electricity, and K.M. was malnourished, physically neglected and underperforming.

Secondly, mother ignores the unchanging dynamic that required K.M. and Jordan’s removal; namely her abdication of her parental responsibility in favor of a relationship. In K.M.’s case, mother deferred to Frank to the great detriment of her child as described above. In Jordan’s case, mother deferred to Russell by joining him in drug use. As a result of her choice, Jordan, like K.M., was living in a filthy home with caretakers who were continually under the influence of drugs. In addition, Jordan had access to dirty needles, which placed him at risk of acquiring serious infection and disease.

We conclude that substantial evidence supports the juvenile court’s conclusion that mother failed to remedy the problem that necessitated K.M.’s removal. Moreover, given mother’s pattern of subordinating her children’s needs to the control of a man despite extensive reunification services, the juvenile court could reasonably conclude that any further attempt to reunify her with Jordan would be futile and not in his best interest. Thus, we affirm the juvenile court’s orders denying her reunification services under section 361.5, subdivisions (b)(10) and (11) and setting a section 366.26 hearing and deny the petition.

DISPOSITION

The petition for extraordinary writ is denied. This opinion is final forthwith as to this court.